STATEMENT OF MICHAEL ANDERSON, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON NATIVE AMERICAN AND INSULAR AFFAIRS, UNITED STATES HOUSE OF REPRESENTATIVES, ON H.R. 3671, "TO PROVIDE FOR THE RECOGNITION OF THE UNITED HOUMA NATION AND TO PROVIDE FOR THE SETTLEMENT OF LAND CLAIMS OF THE UNITED HOUMA NATION".

JULY 17, 1996

Good afternoon, Mr. Chairman and Members of the Committee. I am pleased to present the Department's views on H.R. 3671, a bill "To Provide for the Recognition of the United Houma Nation and to Provide for the Settlement of Land Claims of the United Houma Nation." If enacted, this bill would recognize a tribe in Louisiana which would be eligible to receive all services and benefits provided to Indians because of their status as federally recognized tribes. It would also extinguish various categories of claims which the individual members or groups of members of the United Houma Nation (UHN), and many other people who are not now and never have been members of the UHN, may have without any compensation to any claimants.

Although we acknowledge Congress' authority to recognize Indian tribes, we have serious concerns with H. R. 3671.

1. The bill would reverse the Department's published proposed negative finding. The Department's preliminary finding conflicts with the history stated in the bill and with certain premises on which the bill is based. As the bill stands it could undermine the existing acknowledgment process;

2. The bill extinguishes claims without compensation to any claimants; and

3. The claims extinguished by the bill are unknown and unspecified, and are so vast, they jeopardize land claims beyond Louisiana.

The UHN is a petitioner in the Federal acknowledgment process. The Department issued a proposed finding in 1994 which declined to acknowledge the United Houma petitioner because it did not meet the acknowledgment criteria in 25 CFR 83.7. The preliminary negative finding is based on the petitioner's own extensive research, and research by the Department, and addresses the group's history, ancestry, politics and community organization. Under our regulations, of course, the petitioners could present enough evidence to reverse the Bureau of Indian Affairs' preliminary conclusions.

H.R. 3671 extinguishes claims without monetary or land compensation to any claimants, making it unlike any tribal claims bill that Congress has passed in recent memory. To our knowledge, all legislation in the past 20 years which has combined extinguishment of claims with acknowledgment or restoration of tribal status has included compensation for the claims extinguished by the Act.

Typically, claims legislation, whether linked to recognition or not, has been enacted only after litigation has commenced. Litigation has precisely defined these claims and identified the claimants. For example, legislation implementing claims of the Mashantucket Pequot of Connecticut, the Maliseet of Maine and the Catawba of South Carolina settlements not only restored or recognized the tribes; it awarded land or monetary settlements, as well.

The Narragansett, Gayhead Wampanoag and Mohegan claims settlement Acts carefully ratified claims and included land and monetary compensation. These bills were enacted only after tribal status had been determined through the administrative process (25 CFR 83). These Acts also ratified agreements which had already been reached and contained a formula which local jurisdictions, states, and the Federal Government used to compensate the tribes with land, payments, or both, to avoid any Fifth Amendment issues about taking property without just compensation.

The claims extinguished by H.R. 3671 are unknown and unspecified. Particularly unfair and not in the best interest of the Indians, is the completely undefined scope of the claims being relinquished. We know of two related law suits which may be affected by this bill: Sidney Verdin v. Louisiana Land and Exploration Company and Louisiana Land and Exploration Company v. Verdin. The first case asserts aboriginal title to land claimed now by the company. Sidney Verdin and his family would appear to fall under the jurisdiction of this Act and their claims would be extinguished by this bill. H.R. 3671 would also extinguish claims by thousands of persons who descend from a handful of people who took land grants in this lower bayou region during the Spanish colonial period in the late 1700's. Most of these lands were either lost during reconstruction when high taxes intentionally pushed many southerners from their lands, and during the 1920's and 1930's, when valuable oil and natural gas fields were lost through numerous individual transactions, the nature and legality of which should be determined on a case by case basis. Consequently, no party, including Congress and the Department, knows the nature and value of the claims. Yet, they are being extinguished without any compensation.

The language used in the various sections appears to conflict and to be so broad as to extend the extinguishment of claims well beyond Louisiana. Section 5 of this bill appears to exceed the purpose articulated in Section 2(b). Section 5(a) is worded so broadly that it could be interpreted to include any claim which may be brought by the United States on its own behalf. In order to limit Section 5 to the scope of the proposed bill, clause (2) of section 5(a) should be deleted. Section 5(a)(1) would continue to ratify any transfer made by the United States on behalf of the tribe to the State of Louisiana.

The language in section 5(b) could be interpreted as eliminating aboriginal Indian title not only of the UHN, but of any other Indian tribe in the United States. Like Section 5(a), its scope appears more expansive than the purposes of the proposed bill.

The language in Section 5(c) references property described in Section 5(a), but appears to extinguish aboriginal claims of all tribes in Louisiana as well as the remainder of the United States. Similarly, claims of individual Indians are affected. Deletion of the phrase "or any other Indian, Indian Nation, or Tribe or band of Indians" in Sections 5 (b) and (c) will bring these sections in line with the purpose of the bill.

Section 5(d) appears to abrogate those provisions of the Louisiana Purchase Treaty which protect the property rights of landholders who acquired title under the Spanish and French kings as these rights pertain to Houma Indians and those who are descendants from any of the progenitors of the UHN. This extinguishment also appears to extend to any title, including grants and patents, to land or improvements anywhere in the United States. Because the UHN progenitors' descendants live throughout the United States, this provision could have repercussions in every state.

Section 5(e) prevents the United States from bringing Non-Intercourse Act claims on behalf or the UHN or any of its members. In addition, this Section could prevent the United States from recovering property based on illegal condemnation proceedings or fraudulent conveyances which occurred prior to the date of enactment. It is unclear if Section 5(f) is intended to limit the scope of Sections 5 (d) and (e). If so, 5 (f) should be written as a proviso in the two sections.

Usually a land claims settlement awaits resolution of tribal status. The past history of such land claims litigation indicates that there is more than sufficient motivation to reach a negotiated settlement after tribal status is established.

The bill reverses a proposed negative finding issued by the Department of the Interior published in December 1994. Since then, the Biloxi, Chitimacha Confederacy of Muskogees, Inc. has petitioned on their own. Another group from Isle Jean-Charles, one of the most traditional bayou communities, has also formalized their own government and intend to petition separately. The membership of these groups overlaps with the UHN's membership. Sidney Verdin, one of the parties in the above mentioned litigation belongs to the Isle Jean-Charles group.

The "UHN" did not exist prior to 1979, when it was formed by a merger of the "Houma Tribes, Inc.", which was in existence by 1972, and the "Houma Alliance, Inc." which has existed since 1974. The BIA found no evidence of any structured governmental organization to reorganize prior to the formation of the "Houma Indians of Louisiana, Inc." in the early 1960's.

The Department's proposed finding documented the Indian ancestry of UHN members and found that it does not trace to the historical Houma Indian tribe, which lived north of Baton Rouge when the first French explorers passed in the 1600's.

The bill does not designate an existing membership roll. Membership rolls of UHN have varied from 2,700 to 17,600. Congress will not know who it is recognizing, and the government will not know who is recognized.

The legislation, at a minimum, should define the criteria for creation of the roll. Presumably, a new constitution could be adopted after the bill is enacted and before a roll is submitted to the Secretary which would greatly expand, or limit, the membership.

Not having a clear membership will have detrimental effects on the tribe and the government in the future. The lack of a clearly defined membership has created or contributed to serious conflicts within several tribes acknowledged outside of the acknowledgment process in recent years. Litigation over control of tribal assets and determination of eligibility to vote and legitimacy of claimants to tribal leadership has resulted.

We recommend that the UHN and the other petitioners who are encompassed by the UHN membership rolls proceed through the acknowledgment process so that detailed evaluations of their cases can be made. If they do meet the criteria for acknowledgment, the process will also give them time to address issues involving membership and resolve disputes over governance within the tribe. After recognition, settlement of any claims under the Non-Intercourse Act could be done in an informed way and based on real knowledge of the value of specific claims.

In the BIA's proposed finding, Congress has before it a thorough and detailed analysis of the history and socio-political character of the UHN. The questions raised in the proposed finding may be resolved when comments on the proposed finding are received and considered.

When the administrative review of the UHN is complete, it could result in the reversal of the proposed finding. Two previous negative proposed findings, Gayhead Wampanoag and Mohegan, have been reversed based on additional information that the petitioner had not previously submitted. If, after the review of the UHN and the other "Houma" groups is completed, acknowledgment is denied, Congress may wish to extend recognition on a different basis than that in this bill.

This concludes my prepared statement. I will be happy to answer any questions the Committee may have.